

**STATE OF MINNESOTA
DEPARTMENT OF COMMERCE**

BULLETIN 94-3

Issued this 18th day of
July, 1994

TO: ALL INSURANCE COMPANIES, SUBSCRIBER GROUPS, MULTIPLE EMPLOYER TRUSTS AND THIRD-PARTY ADMINISTRATORS DOING BUSINESS WITHIN THE STATE OF MINNESOTA.

RE: Amendments to Minnesota Statutes Chapter 295, Relating to the Pass-Thru Provisions of the Medical "Provider Tax".

During the 1994 session, the Minnesota Legislature amended Minnesota Statutes chapter 295. The statute was amended for the purpose of clarifying certain provisions relating to a medical provider's right to seek reimbursement for a portion of the provider tax liability from insurers. The following issues were addressed by the 1994 Amendment.

1. APPLICABILITY OF THIRD-PARTY REIMBURSEMENT LIABILITY:

If requested to do so, an insurer must reimburse a provider for 2% of the gross revenues received by the provider under a third-party contract, plus 2% of any copayment and/or deductibles paid to the provider by the insured/patient. The amendment further clarifies that the reimbursement liability applies to, but is not limited to: Insurers, HMO's, ISN's, PPO's, self-insureds, multiple employer trusts, non-profit, for profit and not for profit organizations. (NOTE: The issue of ERISA preemption for self-insureds has been litigated. The court has found that the State has authority to require self-insureds to comply with the "pass-thru" responsibility. Although this decision is being appealed, current law requires self-insureds to reimburse providers for 2% of the covered charges.)

2. EXTENT OF PROVIDER TAX REIMBURSEMENT LIABILITY:

Insurer responsibility for the 2% pass-thru is governed by the terms of the insurance contract. If the insurance contract limits liability to an identified amount, such as a usual and customary fee schedule, the insurer is not responsible for the 2% pass-thru on provider charges in excess of the liability limits. The pass-thru statute also makes the insurer responsible for reimbursing providers for 2% of the cost of copayments and deductibles paid by the insured under the insurance contract.

The insurer, however, is not responsible for reimbursing providers for 2% of any co-insurance amounts under the contract. As an example, if the covered charges for a

procedure are \$100.00 and the insurer is responsible for 80% of the covered charges, the insurer would be responsible for reimbursing the provider for 2% of \$80.00, or \$1.60.

3. **APPLICABILITY TO NON "MEDICAL" INSURANCE POLICY/CONTRACTS:**

The amendment clarifies the right of providers to seek reimbursement from insurers for that portion of the 2% provider tax they have paid, which relates to the provision of medical services, regardless of whether those services were rendered pursuant to a contract of: health insurance, auto insurance, workers' compensation insurance or homeowner's insurance; issued by an insurer, self-insured, non profit, not for profit, or for profit entity.

4. **ADDITIONAL ENTITIES ENTITLED TO REIMBURSEMENT:**

The amendment expanded the "group" of health care providers entitled to seek reimbursement for a portion of their "provider tax" to include pharmacies. It should be noted that pharmacies are only eligible for reimbursement from insurers if they (pharmacies) must pay an additional amount to drug wholesalers because of the wholesaler's payment of the provider tax.

5. **RECORD KEEPING AND RECORDING REQUIREMENTS:**

Insurers must maintain records sufficient to evidence their compliance with their "pass-thru liability". The records must be maintained in a format that will enable the Commissioner to confirm compliance in any future audit or review. In addition, insurers annually must file a "notice" with the Department of Commerce which attests to their compliance with this provision of the statute. The Department will require the "notice" to be in affidavit format and signed by a company officer.

6. **ENFORCEMENT/SANCTIONS:**

Insurers who fail to fulfill their responsibilities to reimburse providers for the applicable portion of their 2% provider tax payments may be subject to the imposition of disciplinary actions by the appropriate regulatory agency. These sanctions can include, but are not limited to action against the license of the offending party and/or the assessment of a fine.

7. **EFFECTIVE DATE FOR INSURER REIMBURSEMENT LIABILITY:**

Because the Legislature deemed its amendment(s) to be a "clarification" of the original legislative intent, it established an effective date for the amendment(s) of January 1, 1994. Therefore, if (since January 1, 1994) an insurer has failed to fully comply with its "pass-thru liability", it should initiate whatever procedure is necessary to both ensure future compliance and to address any previous instances of non-compliance. If the Commerce

Department receives complaints alleging non compliance, the insurer will be required to provide verifiable evidence of its compliance.

In addition to the concerns addressed by the 1994 Amendment, other questions have been raised by both insurers and providers relating to the applicability and implementation of the "pass-thru" provision. The most frequently asked questions and the Departments answers are as follows:

DOES AN INSURER'S LIABILITY FOR REIMBURSING THE PROVIDER FOR A PORTION OF THE 2% PROVIDER TAX EXTEND TO THE ENTIRE AMOUNT BILLED BY THE PROVIDER OR ONLY THAT AMOUNT COVERED BY THE APPLICABLE CONTRACT?

ANSWER: An insurer's liability for provider tax reimbursement is limited to 2% of the "covered charges" plus the portion of said charges paid by the insured/patient in the form of co-pays and deductibles.

IF A PPO, SUBSCRIBER GROUP, INSURER, ETC., HAS ENTERED INTO CONTRACTS WITH PARTICIPATING PROVIDERS WHEREIN THE PROVIDERS HAVE AGREED TO PROVIDE MEDICAL SERVICES FOR A SPECIFIC AMOUNT/FEE, CAN THE PPO, SUBSCRIBER GROUP, ETC., REFUSE TO PAY THE ADDITIONAL 2% "PASS-THRU"?

ANSWER: No, the "pass-thru" liability is in addition to any reimbursement for medical services.

IF OUR COMPANY HAS AGREED TO REIMBURSE PROVIDERS FOR AN AMOUNT EQUAL TO A CERTAIN PERCENTILE ON A USUAL AND CUSTOMARY FEE SCHEDULE (E.G. AT THE 90TH PERCENTILE) AND THE PROVIDER'S TOTAL BILL WILL EXCEED THIS AMOUNT, BECAUSE OF THE 2% PASS-THRU, CAN WE REFUSE TO PAY THE AMOUNT IN EXCESS OF THE STATED PERCENTILE?

ANSWER: No, the "pass-thru" liability is not subject to contractual allowances for services. Thus, if a provider bills at the maximum level of reimbursement under an existing contract/policy, it is still entitled to an additional 2% of the maximum rate of reimbursement.

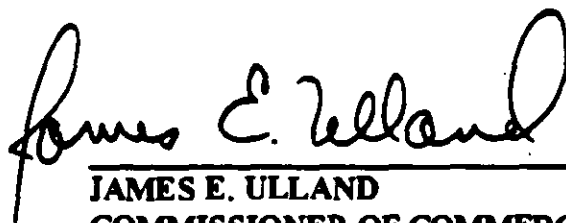
CAN AN INSURER REQUIRE A PROVIDER TO FOLLOW A CERTAIN BILLING PROCEDURE AS A CRITERIA FOR REIMBURSEMENT ELIGIBILITY?

ANSWER: The statute does not condition eligibility for reimbursement upon following a specific billing procedure. Therefore, unless there is specific contract language between the insurer and the provider relating to the billing process for the

"premium tax reimbursement"; insurers may not require providers to adhere to a specific billing process. Although providers may be reasonably subjected to some additional delays if they refuse to abide by an insurer's prescribed billing procedures, they may not be ultimately denied reimbursement.

IS AN INSURER'S RESPONSIBILITY FOR PROVIDER TAX REIMBURSEMENT APPLICABLE TO THOSE TRANSACTIONS WHERE AN INSURER PROVIDES A SPECIFIC MONETARY PAYMENT TO AN INSURED/PATIENT AS A RESULT OF THEIR CONFINEMENT IN A MEDICAL FACILITY (E.G. \$100 A DAY FOR EACH DAY THE INSURED IS CONFINED TO A HOSPITAL)?

ANSWER: The Department does not believe the reimbursement liability extends to all such contracts. As an example, the Department believes that an agreement/policy which entitles an insured to a stated amount, on a daily basis if confined in a medical facility, would not subject the insurer to the premium tax reimbursement liability. In this case, the contract is with the insured and is not necessarily intended to indemnify the insured for medical expenses.



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